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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 09/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/931,028

Applicant(s)

HAYASE ET AL

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim 1 recites the limitations "the center", "the portion", and "the position" in lines 9, 10, and 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said elastic members" in line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the outermost surface" in line 19. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "any other sheet" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "the anti-leakage sheet side" in line 24. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the 30% elongation stress" in line 30. There is insufficient antecedent basis for this limitation in the claim.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosch et al. (5,876,394).

Rosch discloses a shorts type disposable diaper 10, as shown in figure 2, comprising a liquid permeable topsheet 56, a liquid impermeable anti-leakage sheet 58, and a liquid retentive absorbent core 60. A plurality of body-surrounding elastic members 26 and 28, as shown in figure 6, are provided at a body-surrounding portion located between the waist opening portion 20 and 22, and the leg opening portion 30 and 32. The body-surrounding elastic members 26 and 28 are located in at least side portions extending outward from the absorbent core 60, and are not present in the central portion of the absorbent core 60, as shown in figure 2. The width of the absorbent core 60 is about 50% of the width of the body-surrounding portion of the diaper 10, as measured from figure 2. The width of the body-surrounding elastic members is about 43% of the width of the diaper 10, as measured from figure 2.

With respect to claim 2, the body-surrounding elastic members 26 and 28 are disposed between the anti-leakage sheet 58 and an outer sheet 14, as shown in figure 6.

With respect to claim 3, the diaper 10 comprises an absorbent body 12, comprising the liquid permeable topsheet 56, the liquid impermeable anti-leakage sheet 58, and the liquid retentive absorbent core 60, and an exterior member comprising the outer sheet 14. The absorbent body 12 and exterior member comprising outer sheet 14 are partially bonded at the waist opening portion 20 and 22 of the absorbent body 12, as shown in figure 6.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. (5,749,865).

Yamamoto discloses a shorts type disposable diaper, as shown in figure 1, comprising a liquid permeable topsheet 10, a liquid impermeable anti-leakage sheet 11, and a liquid retentive absorbent core 12. A plurality of body-surrounding elastic members 30 are provided at a body-surrounding portion 28 located between the waist opening portion 23, and the leg opening portion 22. The body-surrounding elastic members 30 are located in at least side portions extending outward from the absorbent core 12, and are not present in the central portion, or crotch region, of the absorbent core 12, as shown in figure 2. The width of the absorbent core 12 is between about 28% to about 61% of the width of the body-surrounding portion 28 of the diaper, as measured from figure 1. The width of the body-surrounding elastic members 30 is about 89% of the width of the diaper, as measured from figure 1.

With respect to claim 4, the diaper further comprises an elastic member 29, as shown in figure 2, which extends circumferentially around the waist opening portion 23. The elongation stress of the waist opening portion 23 is greater than the elongation

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stress of the body-surrounding portion 28, as disclosed in lines 4-9 of the abstract. It is noted that the percentage of elongation is not disclosed, however if the overall elongation stress of the waist opening portion 23 is greater than the elongation stress of the body-surrounding portion 28, the 30% elongation stress inherently is greater as well.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosch et al. (5,876,394) as applied to claim 1 above, and further in view of Iskra (5,021,050).

Rosch discloses all aspects of the claimed invention but remains silent as to the Taber stiffness of the absorbent core.

Iskra discloses a disposable diaper 10, as shown in figure 1, comprising an absorbent core 16, as shown in figure 3. The absorbent core 16 has a Taber stiffness of less than about 7 g/cm, as disclosed in column 3, lines 31-40. The low Taber stiffness of the absorbent core 16 allows the absorbent core 16 to be flexible enough to bend to form the shape of the diaper 10, as shown in figure 1.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the absorbent core of Rosch with a Taber stiffness of less than about 7 g/cm, as taught by Iskra, to give the absorbent core a suitable flexibility.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. (5,749,865) as applied to claim 1 above, and further in view of Iskra (5,021,050).

Yamamoto discloses all aspects of the claimed invention but remains silent as to the Taber stiffness of the absorbent core.

Iskra discloses a disposable diaper 10, as shown in figure 1, comprising an absorbent core 16, as shown in figure 3. The absorbent core 16 has a Taber stiffness of less than about 7 g/cm, as disclosed in column 3, lines 31-40. The low Taber stiffness of the absorbent core 16 allows the absorbent core 16 to be flexible enough to bend to form the shape of the diaper 10, as shown in figure 1.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the absorbent core of Yamamoto with a Taber stiffness of less than about 7 g/cm, as taught by Iskra, to give the absorbent core a suitable flexibility.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, Primary Examiner Dennis Ruhl can be reached on (703) 308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

CUA

cla

September 12, 2002



DENNIS RUHL  
PRIMARY EXAMINER